

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

August 6, 2013

Number: **201348010**
Release Date: 11/29/2013

Third Party Communication: None
Date of Communication: Not Applicable

Index (UIL) No.: 4161.02-01
CASE-MIS No.: TAM-121190-13

Chief Excise Tax Operations, SBSE Excise

Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No
Years Involved:
Date of Conference:

LEGEND:

Taxpayer =

ISSUE:

Whether a buss cable is a taxable part or accessory within the meaning of § 4161(b)(1)(B)(i) of the Internal Revenue Code (the Code) and § 48.4161(b)-2(b)(1) of the Manufacturers and Retailers Excise Tax Regulations.

CONCLUSION:

A buss cable is a taxable part or accessory within the meaning of § 4161(b)(1)(B)(i) and § 48.4161(b)-2(b)(1).

FACTS:

A buss cable is a string or cable that attaches to a compound bow. Generally, it allows an archer, in conjunction with other bow components, to more easily pull back or draw the bow string and hold a heavier draw while maintaining accuracy. Taxpayer produces buss cables from high-modulus polyethylene fiber in standard, pre-cut lengths with a finished loop at each end, and sells them for attachment to a bow. When a buss cable is attached to a bow, it is further fitted to that particular bow. High-modulus polyethylene fiber is a material that is also used to make finished bow strings and other products.

LAW:

Section 4161(a)(1)(A) generally imposes tax on the sale of any article of sport fishing equipment by the manufacturer, producer, or importer a tax equal to 10 percent of the price for which so sold.

Section 4161(a)(4) provides that in the case of any sale by the manufacturer, producer, or importer of any article of sport fishing equipment, such article shall be treated as including any parts or accessories of such article sold on or in connection therewith or with the sale thereof.

Section 4161(b)(1)(A) imposes tax on the sale by the manufacturer, producer or importer of any bow which has a peak draw weight of 30 pounds or more, a tax equal to 11 percent of the price for which so sold.

Section 4161(b)(1)(B) imposes tax on the sale by the manufacturer, producer or importer (i) of any part or accessory suitable for inclusion in or attachment to a bow described in § 4161(b)(1)(A) a tax equal to 11 percent of the price for which so sold.

Section 4162(a) lists the sport fishing equipment upon which § 4161(a) imposes tax.

Section 48.4161(a)-3 generally provides that the tax attaches with respect to parts and accessories for articles specified in § 4161(a) and § 48.4161(a)-1 (sport fishing equipment) that are sold on or in connection with the sale thereof, at the same rate applicable to the sale of the basic articles. The tax attaches in such cases whether or not charges for the parts or accessories are billed separately. To be considered a part or accessory for an article specified in § 4161(a), an item must be either essential to the operation of the specified article, or be designed to directly improve the performance of the specified article, or to improve its appearance. A sale of a part or accessory which would otherwise be considered a sale "on or in connection with" the sale of an article taxable under § 4161(a), is not subject to tax if the part or accessory is sold as a replacement for an identical part or accessory being sold with the taxable article.

Section 48.4161(b)-2(b)(1) defines “parts and accessories” for bows and arrows to include all articles (other than fishing reels) suitable for inclusion in, or attachment to, a bow or arrow of the type described in § 4116(b)(1) and § 48.4161(b)-2(a). Examples of parts and accessories for bows are bow handles, bow limbs, bow strings, bow string silencers, bow stabilizers, arrow rests, bow slings, bow sights, bow levels, bow tip protectors, brush buttons, camouflaged bow covers and all other articles designed to be attached to or included in a bow to assist in aiming or propelling an arrow, or to protect the bow while in use.

Section 48.4161(b)-2(b)(2) excludes from the definition of “parts and accessories” general purpose materials and articles that are not specifically designed to directly improve the performance or appearance of bows or arrows, or to protect them while in use. Such materials and articles are not considered to be “parts and accessories” for bows or arrows, even though such materials may be intended, after further processing, to be included in or attached to bows or arrows. An example of a nontaxable article that is designed for use with a bow, but is neither attached to a bow, nor serves a purpose directly related to the efficient use of a bow, is a carrying case for a bow. Examples of nontaxable general purpose materials or articles are glues and cements, feathers before they are prepared for use with arrows, and bow string thread before it is processed into bow strings. In addition, the term “parts and accessories” does not include articles in the nature of expendable supplies, even though such articles are designed to be applied to, or used with, bows or arrows. Examples of such supply materials are bow string wax and archery powder.

Rev. Rul. 98-5, 1998-1 C.B. 264, provides a nonexclusive list of taxable and nontaxable articles under § 4161(b). The ruling states that parts or accessories subject to the tax include replacement parts or accessories. The term “buss cable” is not listed on either illustrative list of taxable or nontaxable articles.

ANALYSIS:

Section 48.4161(b)-2(b)(1) defines “parts and accessories” for bows and arrows to include all articles (other than fishing reels) suitable for inclusion in, or attachment to, a taxable bow or arrow. This includes all articles designed to be attached to or included in a bow to assist in aiming or propelling an arrow, or to protect the bow while in use. A buss cable is designed to be attached to and included in a bow. Further, it assists the archer in drawing the bow string and allows the archer to hold a heavier draw for a longer period of time, thus aiding in both aiming and propelling an arrow. Accordingly, a buss cable is a taxable part or accessory within the meaning of § 48.4161(b)-2(b)(1).

Taxpayer argues that a buss cable is not taxable because it is a general purpose material and article within the meaning of § 48.4161(b)-2(b)(2). Section 48.4161(b)-2(b)(2) excludes from the definition of “parts and accessories” general purpose materials and articles that are not specifically designed to directly improve the

performance or appearance of bows or arrows, or to protect them while in use. Such materials and articles are not considered to be “parts and accessories” for bows or arrows, even though such materials may be intended, after further processing, to be included in or attached to bows or arrows.

Taxpayer processes general purpose high-modulus polyethylene fiber to produce finished, standardized buss cables that are intended to be attached to a bow, and are marketed and sold for this purpose. A buss cable is designed to directly improve the performance of the bow. Accordingly, a buss cable is not a general purpose material or article.

Additionally, taxpayer claims that a buss cable is an expendable and wearable item within the meaning of § 48.4161(b)-2(b)(2). The term “parts and accessories” does not include articles in the nature of expendable supplies, even though such articles are designed to be applied to, or used with, bows or arrows. Examples of such supply materials are bow string wax and archery powder. While a buss cable may need to be replaced, it is not consumed during use of the bow in the same manner as bow string wax or archery powder. Thus, a buss cable is not “expendable supplies” within the meaning of § 48.4161(b)-2(b)(2).

Taxpayer also urges the IRS to interpret the Code and regulations under § 4161(b) in a manner that is consistent with § 48.4161(a)-3(a) such that it would exclude a buss cable when it is sold as a replacement part. Section 48.4161(a)-3(a) exempts certain sport fishing equipment parts and accessories from the tax imposed under § 4161(a) if the part or accessory is sold as a replacement for an identical part or accessory being sold with the taxable article.

Section 4161(a)(1)(A) imposes tax on the sale of any article of sport fishing equipment by the manufacturer, producer, or importer. Section 4162 defines the term “sport fishing equipment” to mean the articles listed in paragraph (a) of § 4162. Under § 4161(a)(4), any sale by the manufacturer, producer, or importer of any article of sport fishing equipment, such article shall be treated as including any parts or accessories of such article sold on or in connection therewith or with the sale thereof. Section 48.4161(a)-3 provides that a sale of a part or accessory which would otherwise be considered a sale “on or in connection with” the sale of an article taxable under section 4161(a), is not subject to tax if the part or accessory is sold as a replacement for an identical part or accessory being sold with the taxable article.

Congress provided a different statutory framework for bows and arrows. Instead of providing a statutory list of taxable articles and imposing tax on “parts and accessories” sold with such articles, § 4161(b)(1)(B)(i) imposes a tax on any part or accessory suitable for inclusion in or attachment to a taxable bow. The statutory framework for bows and arrows does not have a timing provision similar to § 4261(a)(4) for sport fishing. The regulations under § 4161(b) interpret the § 4161(b) statutory provisions for

bows and arrows rather than the statutory provisions for sport fishing. Additionally, Taxpayer's request asks the IRS to go against its published opinion regarding replacement parts for bows and arrows in Rev. Rul. 98-5, which clearly states that parts or accessories subject to the tax include replacement parts or accessories. Therefore, the IRS will not adopt the Taxpayer's suggestion regarding applying § 48.4161(a)-3(a) to taxable parts or accessories that are replacement parts or accessories for bows and arrows.

CAVEAT:

A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.